

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Criminal Action No. 07-cr-00090-WYD

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. B&H MAINTENANCE & CONSTRUCTION, INC., a New Mexico corporation;
2. JON PAUL SMITH a/k/a J.P. SMITH; and
3. LANDON R. MARTIN,

Defendants.

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**UNITED STATES'S OPPOSITION TO MOTION BY DEFENDANT J.P. SMITH  
REQUESTING MODIFICATION OF CONDITIONS OF BOND IN ORDER TO HAVE  
CONTACT WITH POTENTIAL WITNESS SEAN RENFRO**

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The United States of America opposes the Motion by Defendant J.P. Smith Requesting Modification of Conditions of Bond in Order to Have Contact With Potential Witness Sean Renfro ("Def. Mot."). (Dkt. No. 29.) In addition, the United States has learned that the Pretrial Services Office opposes Smith's proposed modification to his conditions of release. For the reasons stated below, the court should deny the motion.

Defendant Smith is charged with bid rigging in violation of 15 U.S.C. § 1 and with witness tampering in violation of 18 U.S.C. § 1512(b). (Dkt. No. 1 ¶¶ 11-20.) The witness tampering count charges Smith with telephoning Kenneth Rains, who has pled guilty to rigging bids with Smith, and telling him a story that both parties knew was false in an attempt to corruptly persuade Rains to tell the false story to the FBI and a grand jury. Based on the nature of the witness

tampering charge, the Pretrial Services Office recommended that this Court order Smith not to have contact with potential witness in this case. The Court adopted that recommendation as a condition of releasing Smith on bond, and the government believes this condition is appropriate to insure the integrity of all witnesses' testimony in this case.

This condition should not be modified with respect to Sean Renfro because Renfro is potentially an important witness in the United States's case. Renfro is the manager of Sunland Construction, Inc., a competitor of Defendant B&H Maintenance & Construction, in the Farmington, New Mexico, area. The United States has evidence that Renfro e-mailed Smith bid pricing information for a project on which they were rival bidders before either Smith or Renfro had submitted his bid. The United States may call Renfro to testify about this exchange under Federal Rule of Evidence 404(b). In addition, because Smith told the FBI that he did not discuss bids with competitors before bidding, the United States may call Renfro to impeach Smith or to show Smith's knowledge of his own guilt. If Smith and Renfro were able to have contact, Smith would have the opportunity to attempt to influence Renfro's testimony, and because of their close friendship, Renfro may have a strong motive to acquiesce.

Smith argues that he should be able to contact Sean Renfro because "[t]here is no danger that Mr. Smith's contact with Mr. Renfro will result in witness intimidation." Def. Mot. ¶ 5. But that argument does not address the government's concerns: the government is concerned that Smith will attempt to corruptly persuade potential witnesses to change their testimony, as he is already charged with doing, not necessarily that he will intimidate them. If Smith has any contact with Sean Renfro, he will have the opportunity to attempt to influence Renfro's testimony. The Court should ensure that he has no opportunity to do so.

The United States believes that the Court can decide this motion on the papers. However,

if the Court finds a hearing to be necessary, the United States respectfully requests a hearing for late morning on May 10. Counsel for the United States will be in Denver that morning for a 9:00 a.m. hearing before Judge Daniel.

WHEREFORE, the Defendant's Motion should be DENIED.

DATED: May 3, 2007.

Respectfully Submitted,

s/Diane Lotko-Baker

DIANE C. LOTKO-BAKER

s/Carla M. Stern

CARLA M. STERN

s/Mark D. Davis

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**CERTIFICATE OF SERVICE**

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I hereby certify that on May 3, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

gjohnson@hmflaw.com

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patrick-j-burke@msn.com

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I hereby certify that I have mailed or served the document or paper to the following non

CM/ECF participants in the manner indicated by the non-participant's name:

None.

Respectfully Submitted,

s/Diane Lotko-Baker

DIANE C. LOTKO-BAKER

s/Carla M. Stern

CARLA M. STERN

s/Mark D. Davis

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